

§ 242.603 Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks.

(a) *Distribution of information.* (1) Any exclusive processor, or any broker or dealer with respect to information for which it is the exclusive source, that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor shall do so on terms that are fair and reasonable.

(2) Any national securities exchange, national securities association, broker, or dealer that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor, broker, dealer, or other persons shall do so on terms that are not unreasonably discriminatory.

(b) *Consolidation of information.* Every national securities exchange on which an NMS stock is traded and national securities association shall act jointly pursuant to one or more effective national market system plans to disseminate consolidated information, including a national best bid and national best offer, on quotations for and transactions in NMS stocks. Such plan or plans shall provide for the dissemination of all consolidated information for an individual NMS stock through a single plan processor.

(c) *Display of information.* (1) No securities information processor, broker, or dealer shall provide, in a context in which a trading or order-routing decision can be implemented, a display of any information with respect to quotations for or transactions in an NMS stock without also providing, in an equivalent manner, a consolidated display for such stock.

(2) The provisions of paragraph (c)(1) of this section shall not apply to a display of information on the trading floor or through the facilities of a national securities exchange or to a display in connection with the operation of a market linkage system implemented in accordance with an effective national market system plan.

(d) *Exemptions.* The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions,

any person, security, or item of information, or any class or classes of persons, securities, or items of information, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

§ 242.604 Display of customer limit orders.

(a) *Specialists and OTC market makers.* For all NMS stocks:

(1) Each member of a national securities exchange that is registered by that exchange as a specialist, or is authorized by that exchange to perform functions substantially similar to that of a specialist, shall publish immediately a bid or offer that reflects:

(i) The price and the full size of each customer limit order held by the specialist that is at a price that would improve the bid or offer of such specialist in such security; and

(ii) The full size of each customer limit order held by the specialist that:

(A) Is priced equal to the bid or offer of such specialist for such security;

(B) Is priced equal to the national best bid or national best offer; and

(C) Represents more than a *de minimis* change in relation to the size associated with the specialist's bid or offer.

(2) Each registered broker or dealer that acts as an OTC market maker shall publish immediately a bid or offer that reflects:

(i) The price and the full size of each customer limit order held by the OTC market maker that is at a price that would improve the bid or offer of such OTC market maker in such security; and

(ii) The full size of each customer limit order held by the OTC market maker that:

(A) Is priced equal to the bid or offer of such OTC market maker for such security;

(B) Is priced equal to the national best bid or national best offer; and

(C) Represents more than a *de minimis* change in relation to the size associated with the OTC market maker's bid or offer.

(b) *Exceptions.* The requirements in paragraph (a) of this section shall not apply to any customer limit order:

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(1) That is executed upon receipt of the order.

(2) That is placed by a customer who expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed.

(3) That is an odd-lot order.

(4) That is a block size order, unless a customer placing such order requests that the order be displayed.

(5) That is delivered immediately upon receipt to a national securities exchange or national securities association-sponsored system, or an electronic communications network that complies with the requirements of § 242.602(b)(5)(ii) with respect to that order.

(6) That is delivered immediately upon receipt to another exchange member or OTC market maker that complies with the requirements of this section with respect to that order.

(7) That is an "all or none" order.

(c) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, national securities exchange, or national securities association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

§ 242.605 Disclosure of order execution information.

This section requires market centers to make available standardized, monthly reports of statistical information concerning their order executions. This information is presented in accordance with uniform standards that are based on broad assumptions about order execution and routing practices. The information will provide a starting point to promote visibility and competition on the part of market centers and broker-dealers, particularly on the factors of execution price and speed. The disclosures required by this section do not encompass all of the factors

that may be important to investors in evaluating the order routing services of a broker-dealer. In addition, any particular market center's statistics will encompass varying types of orders routed by different broker-dealers on behalf of customers with a wide range of objectives. Accordingly, the statistical information required by this section alone does not create a reliable basis to address whether any particular broker-dealer failed to obtain the most favorable terms reasonably available under the circumstances for customer orders.

(a) *Monthly electronic reports by market centers.* (1) Every market center shall make available for each calendar month, in accordance with the procedures established pursuant to paragraph (a)(2) of this section, a report on the covered orders in NMS stocks that it received for execution from any person. Such report shall be in electronic form; shall be categorized by security, order type, and order size; and shall include the following columns of information:

(i) For market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders:

(A) The number of covered orders;

(B) The cumulative number of shares of covered orders;

(C) The cumulative number of shares of covered orders cancelled prior to execution;

(D) The cumulative number of shares of covered orders executed at the receiving market center;

(E) The cumulative number of shares of covered orders executed at any other venue;

(F) The cumulative number of shares of covered orders executed from 0 to 9 seconds after the time of order receipt;

(G) The cumulative number of shares of covered orders executed from 10 to 29 seconds after the time of order receipt;

(H) The cumulative number of shares of covered orders executed from 30 seconds to 59 seconds after the time of order receipt;

(I) The cumulative number of shares of covered orders executed from 60 seconds to 299 seconds after the time of order receipt;

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(J) The cumulative number of shares of covered orders executed from 5 minutes to 30 minutes after the time of order receipt; and

(K) The average realized spread for executions of covered orders; and

(ii) For market orders and marketable limit orders:

(A) The average effective spread for executions of covered orders;

(B) The cumulative number of shares of covered orders executed with price improvement;

(C) For shares executed with price improvement, the share-weighted average amount per share that prices were improved;

(D) For shares executed with price improvement, the share-weighted average period from the time of order receipt to the time of order execution;

(E) The cumulative number of shares of covered orders executed at the quote;

(F) For shares executed at the quote, the share-weighted average period from the time of order receipt to the time of order execution;

(G) The cumulative number of shares of covered orders executed outside the quote;

(H) For shares executed outside the quote, the share-weighted average amount per share that prices were outside the quote; and

(I) For shares executed outside the quote, the share-weighted average period from the time of order receipt to the time of order execution.

(2) Every national securities exchange on which NMS stocks are traded and each national securities association shall act jointly in establishing procedures for market centers to follow in making available to the public the reports required by paragraph (a)(1) of this section in a uniform, readily accessible, and usable electronic form. In the event there is no effective national market system plan establishing such procedures, market centers shall prepare their reports in a consistent, usable, and machine-readable electronic format, and make such reports available for downloading from an Internet Web site that is free and readily accessible to the public. Every market center shall keep such reports posted on an internet website that is free and

readily accessible to the public for a period of three years from the initial date of posting on the internet website.

(3) A market center shall make available the report required by paragraph (a)(1) of this section within one month after the end of the month addressed in the report.

(b) *Exemptions.* The Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[62 FR 544, Jan. 3, 1997, as amended at 83 FR 58427, Nov. 19, 2018]

§ 242.606 Disclosure of order routing information.

(a) *Quarterly report on order routing.*

(1) Every broker or dealer shall make publicly available for each calendar quarter a report on its routing of non-directed orders in NMS stocks that are submitted on a held basis and of non-directed orders that are customer orders in NMS securities that are option contracts during that quarter broken down by calendar month and keep such report posted on an internet website that is free and readily accessible to the public for a period of three years from the initial date of posting on the internet website. Such report shall include a section for NMS stocks—separated by securities that are included in the S&P 500 Index as of the first day of that quarter and other NMS stocks—and a separate section for NMS securities that are option contracts. Such report shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission’s website for all reports required by this section. Each section in a report shall include the following information:

(i) The percentage of total orders for the section that were non-directed orders, and the percentages of total non-directed orders for the section that were market orders, marketable limit orders, non-marketable limit orders, and other orders;

(ii) The identity of the ten venues to which the largest number of total non-directed orders for the section were routed for execution and of any venue to which five percent or more of non-directed orders were routed for execution, the percentage of total non-directed orders for the section routed to the venue, and the percentages of total non-directed market orders, total non-directed marketable limit orders, total non-directed non-marketable limit orders, and total non-directed other orders for the section that were routed to the venue;

(iii) For each venue identified pursuant to paragraph (a)(1)(ii) of this section, the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and per share, for each of the following non-directed order types:

- (A) Market orders;
- (B) Marketable limit orders;
- (C) Non-marketable limit orders; and
- (D) Other orders.

(iv) A discussion of the material aspects of the broker's or dealer's relationship with each venue identified pursuant to paragraph (a)(1)(ii) of this section, including a description of any arrangement for payment for order flow and any profit-sharing relationship and a description of any terms of such arrangements, written or oral, that may influence a broker's or dealer's order routing decision including, among other things:

- (A) Incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment;
- (B) Disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee;
- (C) Volume-based tiered payment schedules; and
- (D) Agreements regarding the minimum amount of order flow that the broker-dealer would send to a venue.

(2) A broker or dealer shall make the report required by paragraph (a)(1) of this section publicly available within one month after the end of the quarter addressed in the report.

(b) *Customer requests for information on order routing.* (1) Every broker or dealer shall, on request of a customer, disclose to its customer, for:

(i) Orders in NMS stocks that are submitted on a held basis;

(ii) Orders in NMS stocks that are submitted on a not held basis and the broker or dealer is not required to provide the customer a report under paragraph (b)(3) of this section; and

(iii) Orders in NMS securities that are option contracts, the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders. Such disclosure shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website for all reports required by this section.

(2) A broker or dealer shall notify customers in writing at least annually of the availability on request of the information specified in paragraph (b)(1) of this section.

(3) Except as provided for in paragraphs (b)(4) and (5) of this section, every broker or dealer shall, on request of a customer that places, directly or indirectly, one or more orders in NMS stocks that are submitted on a not held basis with the broker or dealer, disclose to such customer within seven business days of receiving the request, a report on its handling of such orders for that customer for the prior six months by calendar month. Such report shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website for all reports required by this section. For purposes of such report, the handling of a NMS stock order submitted by a customer to a broker-dealer on a not held basis includes the handling of all child orders derived from that order. Such report shall be divided into two sections: One for directed orders and one for non-directed orders. Each section of such report shall include, with respect to such order flow sent by the customer to the broker or dealer, the total number of shares sent to the

broker or dealer by the customer during the relevant period; the total number of shares executed by the broker or dealer as principal for its own account; the total number of orders exposed by the broker or dealer through an actionable indication of interest; and the venue or venues to which orders were exposed by the broker or dealer through an actionable indication of interest, provided that, where applicable, a broker or dealer must disclose that it exposed a customer's order through an actionable indication of interest to other customers but need not disclose the identity of such customers. Each section of such report also shall include the following columns of information for each venue to which the broker or dealer routed such orders for the customer, in the aggregate:

(i) *Information on Order Routing.*(A) Total shares routed;

(B) Total shares routed marked immediate or cancel;

(C) Total shares routed that were further routable; and

(D) Average order size routed.

(ii) *Information on Order Execution.*

(A) Total shares executed;

(B) Fill rate (shares executed divided by the shares routed);

(C) Average fill size;

(D) Average net execution fee or rebate (cents per 100 shares, specified to four decimal places);

(E) Total number of shares executed at the midpoint;

(F) Percentage of shares executed at the midpoint;

(G) Total number of shares executed that were priced on the side of the spread more favorable to the order;

(H) Percentage of total shares executed that were priced at the side of the spread more favorable to the order;

(I) Total number of shares executed that were priced on the side of the spread less favorable to the order; and

(J) Percentage of total shares executed that were priced on the side of the spread less favorable to the order.

(iii) *Information on Orders that Provided Liquidity.* (A) Total number of shares executed of orders providing liquidity;

(B) Percentage of shares executed of orders providing liquidity;

(C) Average time between order entry and execution or cancellation, for orders providing liquidity (in milliseconds); and

(D) Average net execution rebate or fee for shares of orders providing liquidity (cents per 100 shares, specified to four decimal places).

(iv) *Information on Orders that Removed Liquidity.* (A) Total number of shares executed of orders removing liquidity;

(B) Percentage of shares executed of orders removing liquidity; and

(C) Average net execution fee or rebate for shares of orders removing liquidity (cents per 100 shares, specified to four decimal places).

(4) Except as provided below, no broker or dealer shall be required to provide reports pursuant to paragraph (b)(3) of this section if the percentage of shares of not held orders in NMS stocks the broker or dealer received from its customers over the prior six calendar months was less than five percent of the total shares in NMS stocks the broker or dealer received from its customers during that time (the "five percent threshold" for purposes of this paragraph). A broker or dealer that equals or exceeds this five percent threshold shall be required (subject to paragraph (b)(5) of this section) to provide reports pursuant to paragraph (b)(3) of this section for at least six calendar months ("Compliance Period") regardless of the percentage of shares of not held orders in NMS stocks the broker or dealer receives from its customers during the Compliance Period. The Compliance Period shall begin the first calendar day of the next calendar month after the broker or dealer equaled or exceeded the five percent threshold, unless it is the first time the broker or dealer has equaled or exceeded the five percent threshold, in which case the Compliance Period shall begin the first calendar day four calendar months later. A broker or dealer shall not be required to provide reports pursuant to paragraph (b)(3) of this section for orders that the broker or dealer did not receive during a Compliance Period. If, at any time after the end of a Compliance Period, the percentage of shares of not held orders in NMS stocks the broker or dealer received

from its customers was less than five percent of the total shares in NMS stocks the broker or dealer received from its customers over the prior six calendar months, the broker or dealer shall not be required to provide reports pursuant to paragraph (b)(3) of this section, except for orders that the broker or dealer received during the portion of a Compliance Period that remains covered by paragraph (b)(3) of this section.

(5) No broker or dealer shall be subject to the requirements of paragraph (b)(3) of this section with respect to a customer that traded on average each month for the prior six months less than \$1,000,000 of notional value of not held orders in NMS stocks through the broker or dealer.

(c) *Exemptions.* The Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[62 FR 544, Jan. 3, 1997, as amended at 83 FR 58427, Nov. 19, 2018]

§ 242.607 Customer account statements.

(a) No broker or dealer acting as agent for a customer may effect any transaction in, induce or attempt to induce the purchase or sale of, or direct orders for purchase or sale of, any NMS stock or a security authorized for quotation on an automated inter-dealer quotation system that has the characteristics set forth in section 17B of the Act (15 U.S.C. 78q-2), unless such broker or dealer informs such customer, in writing, upon opening a new account and on an annual basis thereafter, of the following:

(1) The broker's or dealer's policies regarding receipt of payment for order flow from any broker or dealer, national securities exchange, national securities association, or exchange member to which it routes customers' orders for execution, including a statement as to whether any payment for order flow is received for routing customer orders and a detailed description

of the nature of the compensation received; and

(2) The broker's or dealer's policies for determining where to route customer orders that are the subject of payment for order flow absent specific instructions from customers, including a description of the extent to which orders can be executed at prices superior to the national best bid and national best offer.

(b) *Exemptions.* The Commission, upon request or upon its own motion, may exempt by rule or by order, any broker or dealer or any class of brokers or dealers, security or class of securities from the requirements of paragraph (a) of this section with respect to any transaction or class of transactions, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

§ 242.608 Filing and amendment of national market system plans.

(a) *Filing of national market system plans and amendments thereto.* (1) Any two or more self-regulatory organizations, acting jointly, may file a national market system plan or may propose an amendment to an effective national market system plan ("proposed amendment") by submitting the text of the plan or amendment to the Commission by email, together with a statement of the purpose of such plan or amendment and, to the extent applicable, the documents and information required by paragraphs (a)(4) and (5) of this section.

(2) The Commission may propose amendments to any effective national market system plan by publishing the text thereof, together with a statement of the purpose of such amendment, in accordance with the provisions of paragraph (b) of this section.

(3) Self-regulatory organizations are authorized to act jointly in:

(i) Planning, developing, and operating any national market subsystem or facility contemplated by a national market system plan;

(ii) Preparing and filing a national market system plan or any amendment thereto; or

(iii) Implementing or administering an effective national market system plan.

(4) Every national market system plan filed pursuant to this section, or any amendment thereto, shall be accompanied by:

(i) Copies of all governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors; and

(ii) To the extent applicable:

(A) A detailed description of the manner in which the plan or amendment, and any facility or procedure contemplated by the plan or amendment, will be implemented;

(B) A listing of all significant phases of development and implementation (including any pilot phase) contemplated by the plan or amendment, together with the projected date of completion of each phase;

(C) An analysis of the impact on competition of implementation of the plan or amendment or of any facility contemplated by the plan or amendment;

(D) A description of any written understandings or agreements between or among plan sponsors or participants relating to interpretations of the plan or conditions for becoming a sponsor or participant in the plan; and

(E) In the case of a proposed amendment, a statement that such amendment has been approved by the sponsors in accordance with the terms of the plan.

(5) Every national market system plan, or any amendment thereto, filed pursuant to this section shall include a description of the manner in which any facility contemplated by the plan or amendment will be operated. Such description shall include, to the extent applicable:

(i) The terms and conditions under which brokers, dealers, and/or self-regulatory organizations will be granted or denied access (including specific procedures and standards governing the granting or denial of access);

(ii) The method by which any fees or charges collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or

amendment will be determined and imposed (including any provision for distribution of any net proceeds from such fees or charges to the sponsors and/or participants) and the amount of such fees or charges;

(iii) The method by which, and the frequency with which, the performance of any person acting as plan processor with respect to the implementation and/or operation of the plan will be evaluated; and

(iv) The method by which disputes arising in connection with the operation of the plan will be resolved.

(6) In connection with the selection of any person to act as plan processor with respect to any facility contemplated by a national market system plan (including renewal of any contract for any person to so act), the sponsors shall file with the Commission a statement identifying the person selected, describing the material terms under which such person is to serve as plan processor, and indicating the solicitation efforts, if any, for alternative plan processors, the alternatives considered and the reasons for selection of such person.

(7) Any national market system plan (or any amendment thereto) which is intended by the sponsors to satisfy a plan filing requirement contained in any other section of this Regulation NMS and part 240, subpart A of this chapter shall, in addition to compliance with this section, also comply with the requirements of such other section.

(8)(i) A participant in an effective national market system plan shall ensure that a current and complete version of the plan is posted on a plan website or on a website designated by plan participants within two business days after notification by the Commission of effectiveness of the plan. Each participant in an effective national market system plan shall ensure that such website is updated to reflect amendments to such plan within two business days after the plan participants have been notified by the Commission of its approval of a proposed amendment pursuant to paragraph (b) of this section. If the amendment is not effective for a certain period, the plan participants shall clearly indicate the effective date

in the relevant text of the plan. Each plan participant also shall provide a link on its own website to the website with the current version of the plan.

(ii) The plan participants shall ensure that any proposed amendments filed pursuant to paragraph (a) of this section are posted on a plan website or a designated website no later than two business days after the filing of the proposed amendments with the Commission. If the plan participants do not post a proposed amendment on a plan website or a designated website on the same business day that they file such proposed amendment with the Commission, then the plan participants shall inform the Commission of the business day on which they posted such proposed amendment on a plan website or a designated website. The plan participants shall maintain any proposed amendment to the plan on a plan website or a designated website until the Commission approves the plan amendment and the plan participants update the website to reflect such amendment or the plan participants withdraw the proposed amendment or the plan participants are notified pursuant to paragraph (b)(1)(iii) of this section that the proposed amendment is not filed in compliance with requirements or the Commission disapproves the proposed amendment. If the plan participants withdraw a proposed amendment or are notified pursuant to paragraph (b)(1)(iii) of this section that a proposed amendment is not filed in compliance with requirements or the Commission disapproves a proposed amendment, the plan participants shall remove such amendment from the plan website or designated website within two business days of withdrawal, notification of non-compliant filing or disapproval. Each plan participant shall provide a link to the website with the current version of the plan.

(b) *Effectiveness of national market system plans.* (1) The Commission shall publish notice of the filing of any national market system plan, or any proposed amendment to any effective national market system plan (including any amendment initiated by the Commission), together with the terms of substance of the filing or a description of the subjects and issues involved, and

shall provide interested persons an opportunity to submit written comments. No national market system plan, or any amendment thereto, shall become effective unless approved by the Commission or otherwise permitted in accordance with paragraph (b)(3) of this section.

(i) *Publication of national market system plans.* The Commission shall send the notice of the filing of a national market system plan to the FEDERAL REGISTER for publication thereof under this paragraph (b)(1) within 90 days of the business day on which such plan was filed with the Commission pursuant to paragraph (a) of this section. If the Commission fails to send the notice to the FEDERAL REGISTER for publication thereof within such 90-day period, then the date of publication shall be deemed to be the last day of such 90-day period.

(ii) *Publication of proposed amendments.* The Commission shall send the notice of the filing of a proposed amendment to the FEDERAL REGISTER for publication thereof under this paragraph (b)(1) within 15 days of the business day on which such proposed amendment was posted on a plan website or a website designated by plan participants pursuant to paragraph (a) of this section after being filed with the Commission pursuant to paragraph (a) of this section. If the Commission fails to send the notice to the FEDERAL REGISTER for publication thereof within such 15-day period, then the date of publication shall be deemed to be the business day on which such website posting was made.

(iii) A national market system plan or proposed amendment has not been filed with the Commission for purposes of this paragraph (b)(1) if, not later than 7 business days after the business day of receipt by the Commission, the Commission notifies the plan participants that the filing of the national market system plan or proposed amendment does not comply with paragraph (a) of this section or plan filing requirements in other sections of Regulation NMS and part 240, subpart A of this chapter, except that if the Commission determines that the plan or amendment is unusually lengthy and is complex or raises novel regulatory

issues, the Commission shall inform the plan participants of such determination not later than 7 business days after the business day of receipt by the Commission and, for purposes of this paragraph (b)(1), the filing of such plan or amendment has not been made with the Commission if, not later than 21 days after the business day of receipt by the Commission, the Commission notifies the plan participants that the filing of such plan or amendment does not comply with paragraph (a) of this section or plan filing requirements in other sections of Regulation NMS and part 240, subpart A of this chapter.

(iv) For purposes of this section, a “business day” is any day other than a Saturday, Sunday, Federal holiday, a day that the Office of Personnel Management has announced that Federal agencies in the Washington, DC area are closed to the public, a day on which the Commission is subject to a Federal government shutdown or a day on which the Commission’s Washington, DC office is otherwise not open for regular business; provided further, a filing received by the Commission or a website posting made at or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, on a business day, shall be deemed received or made on that business day, and a filing received by the Commission or a website posting made after 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed received or made on the next business day.

(2) The Commission shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. The Commission shall disapprove a national market system plan or proposed amendment if it does not make such a

finding. Approval or disapproval of a national market system plan, or an amendment to an effective national market system plan (other than an amendment initiated by the Commission), shall be by order. Promulgation of an amendment to an effective national market system plan initiated by the Commission shall be by rule.

(i) Within 90 days of the date of publication of notice of the filing of a national market system plan or proposed amendment, or within such longer period as to which the plan participants consent, the Commission shall, by order, approve or disapprove the plan or amendment, or institute proceedings to determine whether the plan or amendment should be disapproved. Proceedings to determine whether the plan or amendment should be disapproved will be conducted pursuant to 17 CFR 201.700 and 201.701. Such proceedings shall include notice of the grounds for disapproval under consideration and opportunity for hearing and shall be concluded within 180 days of the date of publication of notice of the plan or amendment. At the conclusion of such proceedings the Commission shall, by order, approve or disapprove the plan or amendment. The time for conclusion of such proceedings may be extended for up to 60 days (up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period.

(ii) The time for conclusion of proceedings to determine whether a national market system plan or proposed amendment should be disapproved may be extended for an additional period up to 60 days beyond the period set forth in paragraph (b)(2)(i) of this section (up to 300 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period.

(3) A proposed amendment may be put into effect upon filing with the Commission if designated by the sponsors as:

(i) [Reserved]

(ii) Concerned solely with the administration of the plan, or involving the governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors; or

(iii) Involving solely technical or ministerial matters. At any time within 60 days of the filing of any such amendment, the Commission may summarily abrogate the amendment and require that such amendment be refiled in accordance with paragraph (a)(1) of this section and reviewed in accordance with paragraph (b)(2) of this section, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

(4) Notwithstanding the provisions of paragraph (b)(1) of this section, a proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

(5) Any plan (or amendment thereto) in connection with:

(i) The planning, development, operation, or regulation of a national market system (or a subsystem thereof) or one or more facilities thereof; or

(ii) The development and implementation of procedures and/or facilities designed to achieve compliance by self-regulatory organizations and/or their members of any section of this Regulation NMS (§§ 242.600 through 242.612) and part 240, subpart A of this chapter promulgated pursuant to section 11A of the Act (15 U.S.C. 78k-1), approved by the Commission pursuant to section 11A of the Act (or pursuant to any rule or regulation thereunder) prior to the effective date of this section (either

temporarily or permanently) shall be deemed to have been filed and approved pursuant to this section and no additional filing need be made by the sponsors with respect to such plan or amendment; *provided, however*, that all terms and conditions associated with any such approval (including time limitations) shall continue to be applicable; *provided, further*, that any amendment to such plan filed with or approved by the Commission on or after the effective date of this section shall be subject to the provisions of, and considered in accordance with the procedures specified in, this section.

(c) *Compliance with terms of national market system plans.* Each self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.

(d) *Appeals.* The Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective national market system plan as follows:

(1) Any action taken or failure to act by any person in connection with an effective national market system plan (other than a prohibition or limitation of access reviewable by the Commission pursuant to section 11A(b)(5) or section 19(d) of the Act (15 U.S.C. 78k-1(b)(5) or 78s(d))) shall be subject to review by the Commission, on its own motion or upon application by any person aggrieved thereby (including, but not limited to, self-regulatory organizations, brokers, dealers, issuers, and vendors), filed not later than 30 days after notice of such action or failure to act or within such longer period as the Commission may determine.

(2) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of any such action unless the Commission determines otherwise, after notice and opportunity for hearing on the question of a stay (which hearing may consist only of affidavits or oral arguments).

(3) In any proceedings for review, if the Commission, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record of any proceedings conducted in connection with such action or failure to act and an opportunity for the presentation of reasons supporting or opposing such action or failure to act) and upon consideration of such other data, views, and arguments as it deems relevant, finds that the action or failure to act is in accordance with the applicable provisions of such plan and that the applicable provisions are, and were, applied in a manner consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and the perfection of the mechanisms of a national market system, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding, or if it finds that such action or failure to act imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, the Commission, by order, shall set aside such action and/or require such action with respect to the matter reviewed as the Commission deems necessary or appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets, or to remove impediments to, and perfect the mechanisms of, a national market system.

(e) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

[70 FR 37620, June 29, 2005; 71 FR 232, Jan. 4, 2006, as amended at 85 FR 65497, Oct. 15, 2020]

§ 242.609 Registration of securities information processors: form of application and amendments.

(a) An application for the registration of a securities information processor

shall be filed on Form SIP (§ 249.1001 of this chapter) in accordance with the instructions contained therein.

(b) If any information reported in items 1–13 or item 21 of Form SIP or in any amendment thereto is or becomes inaccurate for any reason, whether before or after the registration has been granted, the securities information processor shall promptly file an amendment on Form SIP correcting such information.

(c) The Commission, upon its own motion or upon application by any securities information processor, may conditionally or unconditionally exempt any securities information processor from any provision of the rules or regulations adopted under section 11A(b) of the Act (15 U.S.C. 78k–1(b)).

(d) Every amendment filed pursuant to this section shall constitute a “report” within the meaning of sections 17(a), 18(a) and 32(a) of the Act (15 U.S.C. 78q(a), 78r(a), and 78ff(a)).

§ 242.610 Access to quotations.

(a) *Quotations of SRO trading facility.* A national securities exchange or national securities association shall not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of the national securities exchange or national securities association to the quotations in an NMS stock displayed through its SRO trading facility.

(b) *Quotations of SRO display-only facility.* (1) Any trading center that displays quotations in an NMS stock through an SRO display-only facility shall provide a level and cost of access to such quotations that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities in that stock.

(2) Any trading center that displays quotations in an NMS stock through an SRO display-only facility shall not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations through a member, subscriber, or customer of the trading center.

(c) *Fees for access to quotations.* A trading center shall not impose, nor

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permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the trading center or against any other quotation of the trading center that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. in an NMS stock that exceed or accumulate to more than the following limits:

(1) If the price of a protected quotation or other quotation is \$1.00 or more, the fee or fees cannot exceed or accumulate to more than \$0.003 per share; or

(2) If the price of a protected quotation or other quotation is less than \$1.00, the fee or fees cannot exceed or accumulate to more than 0.3% of the quotation price per share.

(d) *Locking or crossing quotations.* Each national securities exchange and national securities association shall establish, maintain, and enforce written rules that:

(1) Require its members reasonably to avoid:

(i) Displaying quotations that lock or cross any protected quotation in an NMS stock; and

(ii) Displaying manual quotations that lock or cross any quotation in an NMS stock disseminated pursuant to an effective national market system plan;

(2) Are reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock; and

(3) Prohibit its members from engaging in a pattern or practice of displaying quotations that lock or cross any protected quotation in an NMS stock, or of displaying manual quotations that lock or cross any quotation in an NMS stock disseminated pursuant to an effective national market system plan, other than displaying quotations that lock or cross any protected or other quotation as permitted by an exception contained in its rules established pursuant to paragraph (d)(1) of this section.

(e) *Exemptions.* The Commission, by order, may exempt from the provisions of this section, either unconditionally

or on specified terms and conditions, any person, security, quotations, orders, or fees, or any class or classes of persons, securities, quotations, orders, or fees, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

§ 242.610T Equity transaction fee pilot.

(a) *Pilot pricing restrictions.* Notwithstanding § 242.610(c), on a pilot basis for the period specified in paragraph (c) of this section, in connection with a transaction in an NMS stock, a national securities exchange shall not:

(1) For *Test Group 1*, impose, or permit to be imposed, any fee or fees for the display of, or execution against, the displayed best bid or best offer of such market that exceed or accumulate to more than \$0.0010 per share;

(2) For *Test Group 2*, provide to any person, or permit to be provided to any person, a rebate or other remuneration in connection with an execution, or offer, or permit to be offered, any linked pricing that provides a discount or incentive on transaction fees applicable to removing (providing) liquidity that is linked to providing (removing) liquidity, except to the extent the exchange has a rule to provide non-rebate linked pricing to its registered market makers in consideration for meeting market quality metrics; and

(3) For the *Control Group*, impose, or permit to be imposed, any fee or fees in contravention of the limits specified in § 242.610(c).

(b) *Pilot securities—(1) Initial List of Pilot Securities.* (i) The Commission shall designate by notice the initial List of Pilot Securities, and shall assign each Pilot Security to one Test Group or the Control Group. Further, the Commission may designate by notice the assignment of NMS stocks that are interlisted on a Canadian securities exchange to Test Group 2 or the Control Group.

(ii) For purposes of this section, “Pilot Securities” means the NMS stocks designated by the Commission on the initial List of Pilot Securities pursuant to paragraph (b)(1)(i) of this section and any successors to such NMS stocks. At the time of selection

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by the Commission, an NMS stock must have a minimum share price of \$2 to be included in the Pilot and must have an unlimited duration or a duration beyond the end of the post-Pilot Period. In addition, an NMS stock must have an average daily volume of 30,000 shares or more to be included in the Pilot. If the share price of a Pilot Security in one of the Test Groups or the Control Group closes below \$1 at the end of a trading day, it shall be removed from the Pilot.

(iii) For purposes of this section, “primary listing exchange” means the national securities exchange on which the NMS stock is listed. If an NMS stock is listed on more than one national securities exchange, the national securities exchange upon which the NMS stock has been listed the longest shall be the primary listing exchange.

(2) *Pilot Securities Exchange Lists.* (i) After the Commission selects the initial List of Pilot Securities and prior to the beginning of trading on the first day of the Pilot Period each primary listing exchange shall publicly post on its website downloadable files containing a list, in pipe-delimited ASCII format, of the Pilot Securities for which the exchange serves as the primary listing exchange. Each primary listing exchange shall maintain and update this list as necessary prior to the beginning of trading on each business day that the U.S. equities markets are open for trading through the end of the post-Pilot Period.

(ii) The Pilot Securities Exchange Lists shall contain the following fields:

- (A) Ticker Symbol;
- (B) Security Name;
- (C) Primary Listing Exchange;
- (D) Security Type:
 - (1) Common Stock;
 - (2) ETP;
 - (3) Preferred Stock;
 - (4) Warrant;
 - (5) Closed-End Fund;
 - (6) Structured Product;
 - (7) ADR; and
 - (8) Other;
- (E) Pilot Group:
 - (1) Control Group;
 - (2) Test Group 1; and
 - (3) Test Group 2;
- (F) Stratum Code; and

(G) Date the Entry Was Last Updated.

(3) *Pilot Securities Change Lists.* (i) Prior to the beginning of trading on each trading day the U.S. equities markets are open for trading throughout the end of the post-Pilot Period, each primary listing exchange shall publicly post on its website downloadable files containing a Pilot Securities Change List, in pipe-delimited ASCII format, that lists each separate change applicable to any Pilot Securities for which it serves or has served as the primary listing exchange. The Pilot Securities Change List will provide a cumulative list of all changes to the Pilot Securities that the primary listing exchange has made to the Pilot Securities Exchange List published pursuant to paragraph (b)(2) of this section.

(ii) In addition to the fields required for the Pilot Securities Exchange List, the Pilot Securities Change Lists shall contain the following fields:

- (A) New Ticker Symbol (if applicable);
- (B) New Security Name (if applicable);
- (C) Deleted Date (if applicable);
- (D) Date Security Closed Below \$1 (if applicable);
- (E) Effective Date of Change; and
- (F) Reason for the Change.

(4) *Posting requirement.* All information publicly posted in downloadable files pursuant to paragraphs (b)(2) and (3) of this section shall be and remain freely and persistently available and easily accessible by the general public on the primary listing exchange’s website for a period of not less than five years from the conclusion of the post-Pilot Period. In addition, the information shall be presented in a manner that facilitates access by machines without encumbrance, and shall not be subject to any restrictions, including restrictions on access, retrieval, distribution and reuse.

(c) *Pilot duration.* (1) The Pilot shall include:

- (i) A six-month “pre-Pilot Period;”
- (ii) A two-year “Pilot Period” with an automatic sunset at the end of the first year unless, no later than thirty days prior to that time, the Commission publishes a notice that the Pilot

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shall continue for up to one additional year; and

(iii) A six-month “post-Pilot Period.”

(2) The Commission shall designate by notice the commencement and termination dates of the pre-Pilot Period, Pilot Period, and post-Pilot Period, including any suspension of the one-year sunset of the Pilot Period.

(d) *Order routing datasets.* Throughout the duration of the Pilot, including the pre-Pilot Period and post-Pilot Period, each national securities exchange that facilitates trading in NMS stocks shall prepare and transmit to the Commission a file, in pipe-delimited ASCII format, no later than the last day of each month, containing sets of order routing data, for the prior month, in accordance with the specifications in paragraphs (d)(1) and (2) of this section. For the pre-Pilot Period, order routing datasets shall include each NMS stock. For the Pilot Period and post-Pilot Period, order routing datasets shall include each Pilot Security. Each national securities exchange shall treat the order routing datasets as regulatory information and shall not access or use that information for any commercial or non-regulatory purpose.

(1) Dataset of daily volume statistics, with field names as the first record and a consistent naming convention that indicates the exchange and date of the file, that include the following specifications of liquidity-providing orders by security and separating orders by order designation (exchanges may exclude auction orders) and order capacity:

(i) Code identifying the submitting exchange.

(ii) Eight-digit code identifying the date of the calendar day of trading in the format “yyyymmdd.”

(iii) Symbol assigned to an NMS stock (including ETPs) under the national market system plan to which the consolidated best bid and offer for such a security are disseminated.

(iv) The broker-dealer’s CRD number and MPID.

(v) Order type code:

- (A) Inside-the-quote orders;
- (B) At-the-quote limit orders; and
- (C) Near-the-quote limit orders.

(vi) Order size codes:

- (A) <100 share bucket;

(B) 100–499 share bucket;

(C) 500–1,999 share bucket;

(D) 2,000–4,999 share bucket;

(E) 5,000–9,999 share bucket; and

(F) ≥10,000 share bucket.

(vii) Number of orders received.

(viii) Cumulative number of shares of orders received.

(ix) Cumulative number of shares of orders cancelled prior to execution.

(x) Cumulative number of shares of orders executed at receiving market center.

(xi) Cumulative number of shares of orders routed to another execution venue.

(xii) Cumulative number of shares of orders executed within:

(A) 0 to < 100 microseconds of order receipt;

(B) 100 microseconds to < 100 milliseconds of order receipt;

(C) 100 milliseconds to < 1 second of order receipt;

(D) 1 second to < 30 seconds of order receipt;

(E) 30 seconds to < 60 seconds of order receipt;

(F) 60 seconds to < 5 minutes of order receipt;

(G) 5 minutes to < 30 minutes of order receipt; and

(H) ≥ 30 minutes of order receipt.

(2) Dataset of daily volume statistics, with field names as the first record and a consistent naming convention that indicates the exchange and date of the file, that include the following specifications of liquidity-taking orders by security and separating orders by order designation (exchanges may exclude auction orders) and order capacity:

(i) Code identifying the submitting exchange.

(ii) Eight-digit code identifying the date of the calendar day of trading in the format “yyyymmdd.”

(iii) Symbol assigned to an NMS stock (including ETPs) under the national market system plan to which the consolidated best bid and offer for such a security are disseminated.

(iv) The broker-dealer’s CRD number and MPID.

(v) Order type code:

- (A) Market orders; and
- (B) Marketable limit orders.

(vi) Order size codes:

- (A) <100 share bucket;

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- (B) 100-499 share bucket;
- (C) 500-1,999 share bucket;
- (D) 2,000-4,999 share bucket;
- (E) 5,000-9,999 share bucket; and
- (F) ≥10,000 share bucket.
- (vii) Number of orders received.
- (viii) Cumulative number of shares of orders received.
- (ix) Cumulative number of shares of orders cancelled prior to execution.
- (x) Cumulative number of shares of orders executed at receiving market center.
- (xi) Cumulative number of shares of orders routed to another execution venue.

(e) *Exchange Transaction Fee Summary.* Throughout the duration of the Pilot, including the pre-Pilot Period and post-Pilot Period, each national securities exchange that facilitates trading in NMS stocks shall publicly post on its website downloadable files containing information relating to transaction fees and rebates and changes thereto (applicable to securities having a price equal to or greater than \$1). Each national securities exchange shall post its initial Exchange Transaction Fee Summary prior to the start of trading on the first day of the pre-Pilot Period and update its Exchange Transaction Fee Summary on a monthly basis within 10 business days of the first day of each calendar month, to reflect data collected for the prior month. The information prescribed by this section shall be made available using the most recent version of the XML schema published on the Commission's website. All information publicly posted pursuant to this paragraph (e) shall be and remain freely and persistently available and easily accessible on the national securities exchange's website for a period of not less than five years from the conclusion of the post-Pilot Period. In addition, the information shall be presented in a manner that facilitates access by machines without encumbrance, and shall not be subject to any restrictions, including restrictions on access, retrieval, distribution, and reuse. The Exchange Transaction Fee Summary shall contain the following fields:

- (1) Exchange Name;
- (2) Record Type Indicator:

- (i) Reported Fee is the Monthly Average;
- (ii) Reported Fee is the Median; and
- (iii) Reported Fee is the Spot Monthly;
- (3) Participant Type:
 - (i) Registered Market Maker; and
 - (ii) All Others;
- (4) Pilot Group:
 - (i) Control Group;
 - (ii) Test Group 1; and
 - (iii) Test Group 2;
- (5) Applicability to Displayed and Non-Displayed Interest:
 - (i) Displayed only;
 - (ii) Non-displayed only; and
 - (iii) Both displayed and non-displayed;
- (6) Applicability to Top and Depth of Book Interest:
 - (i) Top of book only;
 - (ii) Depth of book only; and
 - (iii) Both top and depth of book;
- (7) Effective Date of Fee or Rebate;
- (8) End Date of Currently Reported Fee or Rebate (if applicable);
- (9) Month and Year of the monthly realized reported average and median per share fees and rebates;
- (10) Pre/Post Fee Changes Indicator (if applicable) denoting implementation of a new fee or rebate on a day other than the first day of the month;
- (11) Base and Top Tier Fee or Rebate:
 - (i) Take (to remove):
 - (A) Base Fee/Rebate reflecting the standard amount assessed or rebated before any applicable discounts, tiers, caps, or other incentives are applied; and
 - (B) Top Tier Fee/Rebate reflecting the amount assessed or rebated after any applicable discounts, tiers, caps, or other incentives are applied; and
 - (ii) Make (to provide):
 - (A) Base Fee/Rebate reflecting the standard amount assessed or rebated before any applicable discounts, tiers, caps, or other incentives are applied; and
 - (B) Top Tier Fee/Rebate reflecting the amount assessed or rebated after any applicable discounts, tiers, caps, or other incentives are applied;
- (12) Average Take Fee (Rebate)/Average Make Rebate (Fee), by Participant Type, Test Group, Displayed/Non-Displayed, and Top/Depth of Book; and

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(13) Median Take Fee (Rebate)/Median Make Fee (Rebate), by Participant Type, Test Group, Displayed/Non-Displayed, and Top/Depth of Book.

[84 FR 5298, Feb. 20, 2019]

EFFECTIVE DATE NOTE: At 84 FR 5298, Feb. 20, 2019, § 242.610T was added, effective Apr. 22, 2019, through Dec. 29, 2023.

§ 242.611 Order protection rule.

(a) *Reasonable policies and procedures.*

(1) A trading center shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an exception set forth in paragraph (b) of this section and, if relying on such an exception, that are reasonably designed to assure compliance with the terms of the exception.

(2) A trading center shall regularly surveil to ascertain the effectiveness of the policies and procedures required by paragraph (a)(1) of this section and shall take prompt action to remedy deficiencies in such policies and procedures.

(b) *Exceptions.* (1) The transaction that constituted the trade-through was effected when the trading center displaying the protected quotation that was traded through was experiencing a failure, material delay, or malfunction of its systems or equipment.

(2) The transaction that constituted the trade-through was not a “regular way” contract.

(3) The transaction that constituted the trade-through was a single-priced opening, reopening, or closing transaction by the trading center.

(4) The transaction that constituted the trade-through was executed at a time when a protected bid was priced higher than a protected offer in the NMS stock.

(5) The transaction that constituted the trade-through was the execution of an order identified as an intermarket sweep order.

(6) The transaction that constituted the trade-through was effected by a trading center that simultaneously routed an intermarket sweep order to execute against the full displayed size of any protected quotation in the NMS stock that was traded through.

(7) The transaction that constituted the trade-through was the execution of an order at a price that was not based, directly or indirectly, on the quoted price of the NMS stock at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.

(8) The trading center displaying the protected quotation that was traded through had displayed, within one second prior to execution of the transaction that constituted the trade-through, a best bid or best offer, as applicable, for the NMS stock with a price that was equal or inferior to the price of the trade-through transaction.

(9) The transaction that constituted the trade-through was the execution by a trading center of an order for which, at the time of receipt of the order, the trading center had guaranteed an execution at no worse than a specified price (a “stopped order”), where:

(i) The stopped order was for the account of a customer;

(ii) The customer agreed to the specified price on an order-by-order basis; and

(iii) The price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution.

(c) *Intermarket sweep orders.* The trading center, broker, or dealer responsible for the routing of an intermarket sweep order shall take reasonable steps to establish that such order meets the requirements set forth in § 242.600(b)(31).

(d) *Exemptions.* The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[62 FR 544, Jan. 3, 1997, as amended at 83 FR 58429, Nov. 19, 2018]

§ 242.612 Minimum pricing increment.

(a) No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than \$0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than \$1.00 per share.

(b) No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than \$0.0001 if that bid or offer, order, or indication of interest is priced less than \$1.00 per share.

(c) The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

§ 242.613 Consolidated audit trail.

(a) *Creation of a national market system plan governing a consolidated audit trail.* (1) Each national securities exchange and national securities association shall jointly file on or before 270 days from the date of publication of the Adopting Release in the FEDERAL REGISTER a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository as required by this section. The national market system plan shall discuss the following considerations:

(i) The method(s) by which data will be reported to the central repository including, but not limited to, the sources of such data and the manner in which the central repository will receive, extract, transform, load, and retain such data; and the basis for selecting such method(s);

(ii) The time and method by which the data in the central repository will be made available to regulators, in ac-

cordance with paragraph (e)(1) of this section, to perform surveillance or analyses, or for other purposes as part of their regulatory and oversight responsibilities;

(iii) The reliability and accuracy of the data reported to and maintained by the central repository throughout its lifecycle, including transmission and receipt from market participants; data extraction, transformation and loading at the central repository; data maintenance and management at the central repository; and data access by regulators;

(iv) The security and confidentiality of the information reported to the central repository;

(v) The flexibility and scalability of the systems used by the central repository to collect, consolidate and store consolidated audit trail data, including the capacity of the consolidated audit trail to efficiently incorporate, in a cost-effective manner, improvements in technology, additional capacity, additional order data, information about additional securities or transactions, changes in regulatory requirements, and other developments;

(vi) The feasibility, benefits, and costs of broker-dealers reporting to the consolidated audit trail in a timely manner:

(A) The identity of all market participants (including broker-dealers and customers) that are allocated NMS securities, directly or indirectly, in a primary market transaction;

(B) The number of such securities each such market participant is allocated; and

(C) The identity of the broker-dealer making each such allocation;

(vii) The detailed estimated costs for creating, implementing, and maintaining the consolidated audit trail as contemplated by the national market system plan, which estimated costs should specify:

(A) An estimate of the costs to the plan sponsors for establishing and maintaining the central repository;

(B) An estimate of the costs to members of the plan sponsors, initially and on an ongoing basis, for reporting the data required by the national market system plan;

(C) An estimate of the costs to the plan sponsors, initially and on an ongoing basis, for reporting the data required by the national market system plan; and

(D) How the plan sponsors propose to fund the creation, implementation, and maintenance of the consolidated audit trail, including the proposed allocation of such estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors;

(viii) An analysis of the impact on competition, efficiency and capital formation of creating, implementing, and maintaining of the national market system plan;

(ix) A plan to eliminate existing rules and systems (or components thereof) that will be rendered duplicative by the consolidated audit trail, including identification of such rules and systems (or components thereof); to the extent that any existing rules or systems related to monitoring quotes, orders, and executions provide information that is not rendered duplicative by the consolidated audit trail, an analysis of:

(A) Whether the collection of such information remains appropriate;

(B) If still appropriate, whether such information should continue to be separately collected or should instead be incorporated into the consolidated audit trail; and

(C) If no longer appropriate, how the collection of such information could be efficiently terminated; the steps the plan sponsors propose to take to seek Commission approval for the elimination of such rules and systems (or components thereof); and a timetable for such elimination, including a description of how the plan sponsors propose to phase in the consolidated audit trail and phase out such existing rules and systems (or components thereof);

(x) Objective milestones to assess progress toward the implementation of the national market system plan;

(xi) The process by which the plan sponsors solicited views of their members and other appropriate parties regarding the creation, implementation, and maintenance of the consolidated audit trail, a summary of the views of such members and other parties, and how the plan sponsors took such views

into account in preparing the national market system plan; and

(xii) Any reasonable alternative approaches to creating, implementing, and maintaining a consolidated audit trail that the plan sponsors considered in developing the national market system plan including, but not limited to, a description of any such alternative approach; the relative advantages and disadvantages of each such alternative, including an assessment of the alternative's costs and benefits; and the basis upon which the plan sponsors selected the approach reflected in the national market system plan.

(2) The national market system plan, or any amendment thereto, filed pursuant to this section shall comply with the requirements in § 242.608(a), if applicable, and be filed with the Commission pursuant to § 242.608.

(3) The national market system plan submitted pursuant to this section shall require each national securities exchange and national securities association to:

(i) Within two months after effectiveness of the national market system plan jointly (or under the governance structure described in the plan) select a person to be the plan processor;

(ii) Within four months after effectiveness of the national market system plan synchronize their business clocks and require members of each such exchange and association to synchronize their business clocks in accordance with paragraph (d) of this section;

(iii) Within one year after effectiveness of the national market system plan provide to the central repository the data specified in paragraph (c) of this section;

(iv) Within fourteen months after effectiveness of the national market system plan implement a new or enhanced surveillance system(s) as required by paragraph (f) of this section;

(v) Within two years after effectiveness of the national market system plan require members of each such exchange and association, except those members that qualify as small broker-dealers as defined in § 240.0-10(c) of this chapter, to provide to the central repository the data specified in paragraph (c) of this section; and

(vi) Within three years after effectiveness of the national market system plan require members of each such exchange and association that qualify as small broker-dealers as defined in § 240.0-10(c) of this chapter to provide to the central repository the data specified in paragraph (c) of this section.

(4) Each national securities exchange and national securities association shall be a sponsor of the national market system plan submitted pursuant to this section and approved by the Commission.

(5) No national market system plan filed pursuant to this section, or any amendment thereto, shall become effective unless approved by the Commission or otherwise permitted in accordance with the procedures set forth in § 242.608. In determining whether to approve the national market system plan, or any amendment thereto, and whether the national market system plan or any amendment thereto is in the public interest under § 242.608(b)(2), the Commission shall consider the impact of the national market system plan or amendment, as applicable, on efficiency, competition, and capital formation.

(b) *Operation and administration of the national market system plan.* (1) The national market system plan submitted pursuant to this section shall include a governance structure to ensure fair representation of the plan sponsors, and administration of the central repository, including the selection of the plan processor.

(2) The national market system plan submitted pursuant to this section shall include a provision addressing the requirements for the admission of new sponsors of the plan and the withdrawal of existing sponsors from the plan.

(3) The national market system plan submitted pursuant to this section shall include a provision addressing the percentage of votes required by the plan sponsors to effectuate amendments to the plan.

(4) The national market system plan submitted pursuant to this section shall include a provision addressing the manner in which the costs of operating the central repository will be allocated among the national securities ex-

changes and national securities associations that are sponsors of the plan, including a provision addressing the manner in which costs will be allocated to new sponsors to the plan.

(5) The national market system plan submitted pursuant to this section shall require the appointment of a Chief Compliance Officer to regularly review the operation of the central repository to assure its continued effectiveness in light of market and technological developments, and make any appropriate recommendations for enhancements to the nature of the information collected and the manner in which it is processed.

(6) The national market system plan submitted pursuant to this section shall include a provision requiring the plan sponsors to provide to the Commission, at least every two years after effectiveness of the national market system plan, a written assessment of the operation of the consolidated audit trail. Such document shall include, at a minimum:

(i) An evaluation of the performance of the consolidated audit trail including, at a minimum, with respect to data accuracy (consistent with paragraph (e)(6) of this section), timeliness of reporting, comprehensiveness of data elements, efficiency of regulatory access, system speed, system downtime, system security (consistent with paragraph (e)(4) of this section), and other performance metrics to be determined by the Chief Compliance Officer, along with a description of such metrics;

(ii) A detailed plan, based on such evaluation, for any potential improvements to the performance of the consolidated audit trail with respect to any of the following: improving data accuracy; shortening reporting timeframes; expanding data elements; adding granularity and details regarding the scope and nature of Customer-IDs; expanding the scope of the national market system plan to include new instruments and new types of trading and order activities; improving the efficiency of regulatory access; increasing system speed; reducing system downtime; and improving performance under other metrics to be determined by the Chief Compliance Officer;